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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,137	11/15/1999	HIROYUKI TAKEUCHI	1232-19	2582

23117 7590 08/29/2003  
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3d  
EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/440,137

Applicant(s)

TAKEUCHI ET AL

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-34 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

The rejection of the claims over Cain (5,681,608) alone has been dropped because the reference, by itself, does not show all of the features of the claims that include oil or fat with an emulsifier that has antifoaming.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al (5,308,640) in view of Cain (5,681,608) and as further evidenced by Chiraifisi (4,269,864) or Suwa (5,378,484).

Baer (5,308,640) discloses low greasiness French fries that are fried in oil. At Table 1, samples C and E, reduced calorie fats are shown to contain liquid SPE, solid SPE and medium chain triglyceride. The liquid SPE are defined at column 6, lines 30-38 to include sucrose fatty acid esters and sorbitol fatty acid esters. These liquid SPE's are used in the amount shown in Table 1. The claims appear to differ from the reference in the suggestion of a particular medium chain triglyceride. Cain teaches a fat product composed of unsaturated long chain fatty acids and medium chain fatty acids (see abstract) in amounts that fall within the range that are set

forth in the claims. The product is made from the interesterification of fats (column 3, lines 16-23). It would have been obvious to one having ordinary skill in the art to utilize the MCT of Cain in the oil composition of Baer in order to provide for nutrient fat that can be used as a table oil. The MCT of Cain is one of a variety of MCT oils that could have been used as table oil in Baer in order to provide for an oil that is suitable for frying. It is appreciated that the oil of Baer is not disclosed to have enhanced antifoaming but the liquid SPE of Baer are also well known emulsifiers in foods. These emulsifiers are also well known anti-foaming agents (see column 6, lines 43-55 of Chirafisi and column 3, lines 47-67 of Suwa (5,378,484). Thus even though there is no disclosure in Baer as to the use of the liquid SPE's as anti-foaming agents, this anti-foaming property would have been inherent to the use of a liquid SPE in Baer.

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

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number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

~~Any inquiry of a general nature or relating to the status of this~~  
application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CAROLYN PADEN 8-21-03  
PRIMARY EXAMINER  
GROUP 1360 1761